WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION

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OFFICE WEST VIRGINIA
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Form #6

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: West Virginia Consolidated Public Retirement Board TITLE NUMBER: 162

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: General Provisions

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 112

SECTION § 64-2-2, PASSED ON March 12, 2011

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE FOLLOWING DATE: May 1, 2011

Authorized Signature

TITLE 162
LEGISLATIVE RULE
CONSOLIDATED PUBLIC RETIREMENT BOARD

SERIES 1
GENERAL PROVISIONS

§ 162-1-1. General.

1.1. Scope. -- The scope of this rule involves the enabling legislation and general administrative criteria of the Consolidated Public Retirement Board.

1.2. Authority. – W. Va. Code § 5-10D-1.

1.3. Filing Date. – April 25, 2011.

1.4. Effective Date. – May 1, 2011.

§ 162-1-2. Consolidated Public Retirement Board.

2.1. The Board shall determine all other rules that are necessary for its administration and the administration of the Teachers Defined Contribution Retirement System (W. Va. Code § 18-7B-1, et seq.); the Teachers Defined Benefit Retirement System (W. Va. Code § 18-7A-1, et seq.); the Public Employees Retirement System (W. Va. Code § 5-10-1, et seq.); the Judges' Retirement System (W. Va. Code § 51-9-1, et seq.); the Department of Public Safety, Death, Disability and Retirement Fund (W. Va. Code § 15-2 -26, et seq.); the West Virginia State Police Retirement System (W. Va. Code § 15-2A-1, et seq.); the West Virginia Deputy Sheriff Retirement System (W. Va. Code § 7-14D-1, et seq.); the West Virginia Emergency Medical Services Retirement System (W. Va. Code § 16-5V-1, et seq.); and the Municipal Police Officers and Firefighters Retirement System (W. Va. Code § 8-22A, et seq.)

§ 162-1-3. Amendments.

3.1. The Board may make, alter, amend, suspend and repeal the Rules of the Board by a vote of not less than a majority of a quorum of its members at any regular meeting of the Board provided at least ten (10) days notice of such purpose is given. A quorum of the Board may make, alter, amend, suspend or repeal the Rules of the Board at any emergency meeting of the Board, provided at least ten (10) days notice of the purpose to make, amend, alter, suspend or repeal the Rules in whole or part at the meeting is given, and of the substance of the proposed action is announced. However, any action to promulgate, amend, suspend or repeal the Rules of the Board are subject to the rule-making provisions of W. Va. Code § 29A-3 -1 et seq.

§ 162-1-4. General Administrative.

4.1. Fiscal year. The fiscal year of the Board commences on the 1st day of July and ends on the 30th day of June the following year.

4.2. Books, records and minutes. The records of the Board are covered by the laws of the State of West Virginia and are subject to any applicable privilege and/or limitation under the Freedom of Information Act (W. Va. Code §29B-1-1). The Board shall keep all final actions of the Board in the form of minutes, and the minutes shall be open for inspection by the public at all reasonable times.

4.3. Contracts. All contracts and obligations of the Board shall be signed by the chairman or other officers or employees of the Board authorized to execute contracts or other obligations of the Board.

4.4. Indemnification. The Board shall, to the fullest extent allowed by law, indemnify and reimburse its present and future members, officers, employees or agents against loss for all expenses, including without limitation attorney fees, judgments, fines, taxes and penalties and interest thereon, for their official acts as Board members, officers, employees or agents. If the Board determines that a settlement of any action, suit or proceeding is in the best interest of the Board, all amounts paid in effecting the settlement, other than amounts paid by the Board itself, reasonably incurred by a member, officer, employee or agent in connection with or arising out of any action, suit or proceeding in which he or she may be involved by reason or his or her being or having been a member, officer, employee or agent of the Board shall be paid by the Board. Provided, that the indemnity shall not include any expenses incurred by any member, officer, employee or agent with respect to matters as to which he or she is finally adjudged in any action, suit or proceeding to have been guilty of or liable for gross negligence, willful misconduct or criminal acts in the performance of his or her duties of the Board. The right of indemnification provided in this subsection inures to the benefit of the heirs, executors or administrators of each member, officer, employee or agent and is in addition to all other rights to which the member, officer, employee or agent may be entitled as a matter of law.

4.5. Insurance. To the extent possible, the Board shall obtain necessary liability insurance coverage from the West Virginia Board of Risk and Insurance Management to cover itself, its members, officers, employees and agents in the performance of their duties as trustees for the Retirement Systems set forth in this rule.

4.6. Conflict of interest. The Board shall maintain constant vigilance against conflicts of interest, or the mere appearance of conflicts of interest. No officers, member, agent or employee of the Board shall be financially interested, directly or indirectly, in any contract with the Board, or in the sale of any property, real or personal, to or from the Board. Provided, that this section shall not apply to contracts or purchases of property, either real or personal, commodities or services between the Board and any governmental agency.

§ 162-1-5. Administrative Expenses.

5.1. The Consolidated Public Retirement Board shall create an Expense Fund which shall be funded by an assessment against the Teachers Defined Benefit Retirement System, the Public Employees Retirement System, the Judges' Retirement System, the Public Safety Death, Disability and Retirement Fund, the West Virginia State Police Retirement System, the West Virginia Deputy Sheriff Retirement System, the West Virginia Emergency Medical Services Retirement System and the West Virginia Municipal Police Officers and Firefighters Retirement System, with payment out of earnings and the employers part of the Teachers Defined Contribution Plan in an amount determined by the Board, per year, for each member, retirant, beneficiary, and alternate payee receiving benefits. The Board shall deduct the fee from the vested employee account for terminated members and alternate payees of terminated members of the Teachers Defined Contribution Plan who are not vested in any employer contributions.

5.2. All administrative costs of the Board, including, but not limited to, salaries and employee benefits, shall be paid from the expense fund. However, any indemnification required pursuant to subsection 4.4 of this rule shall be paid from the particular Retirement System affected.

5.3. The administrative expense fund is not subject to satisfaction of any judgment or award against any of the Retirement Systems, and the judgment or award shall be satisfied from assets of the particular Retirement System against which it is levied.

§ 162-1-6. Non-Alienation of Benefits: Divorce and Separation.

6.1. The moneys in each of the Retirement Systems and the right of a person to receive any benefit, whether it be an annuity, return of retirement contributions, or other benefit, are not subject to execution, attachment, garnishment, the operation of bankruptcy or other insolvency laws, State or municipal taxation, or any other legal process whatsoever; and are not assignable nor transferable by any employee, retirant or beneficiary: Provided, That orders entered by a court of record and enforced by the Bureau for Child Support and Enforcement may be honored by the Board.

6.2. In cases of divorce or legal separation, the annuity, refund of accumulated contributions, or other provisions available to a member, retirant or beneficiary of any Retirement System may be divisible only as provided in this rule. The Board shall not honor any Qualified Domestic Relations Order seeking to divide a pension benefit of a member, retirant or beneficiary which does not meet the requirements of this rule.

6.2.1. In cases of divorce or legal separation where the member's or retirant's interest in his or her retirement account is subject to division as marital property pursuant to state domestic relation law, that portion of the member's or retirant's retirement account which constitutes marital property and which is subject to division by a Qualified Domestic Relations Order shall be determined by the Board by using the following formula, but only after the benefits are available to the member or retirant at death, refund, disability retirement or retirement: the marital property portion of a member's or retirant's retirement benefit which is subject to division shall be computed by the Board by multiplying the Vested Accrued Retirement Benefit, less all benefits due to Exempt Service, by a fraction, the numerator being the number of years of contributing service incurred during the marriage, and the denominator being the total number of years of contributing service towards the pension at the date of separation or the date of divorce. In determining the marital property portion of a member's or retirant's benefit, the numerator used by the Board in the fraction shall not include the member's previously withdrawn service credit which was not repaid in full as of the date used by the parties as provided for in subdivision 6.2.2. of this rule.

6.2.1.1. "Vested Accrued Retirement Benefit" means the benefit due to the member as of the date specified by the parties in the Qualified Domestic Relations Order set out in subdivision 6.2.2. of this rule.

6.2.1.2. "Exempt Service" includes all additional service credit due to non-contributory military service and accumulated sick and/or annual leave.

6.2.2 In any Qualified Domestic Relations Order which meets the requirements of this rule and which seeks to divide a member's or retirant's state retirement benefit, the parties, by agreement, or the court having jurisdiction of the parties domestic relations proceeding, may utilize either the parties' date of separation or the date of the divorce as their numerator in the marital share formula required by sub-division 6.2.1. of this rule.

6.2.3. For the division of state pension benefits between a member or retirant and his or her ex-spouse by a Qualified Domestic Relations Order which meets the requirements of this rule, a shared payment approach shall be utilized, with the ex-spouse being paid an agreed upon or court ordered percentage of the marital property portion of the member's or retirant's Vested Accrued Retirement Benefit at the same time and in the same form as the benefit elected by and paid to the member once he or she enters pay status.

6.2.4. Unless otherwise specifically agreed to by the parties in their Qualified Domestic Relations Order or ordered by the Court having jurisdiction of the parties' domestic relation proceeding, the tax basis and any post-retirement cost of living increases shall be applied to the benefit of both the member or retirant and the alternate payee proportionate to the division of the Vested Accrued Retirement Benefit.

6.2.5. Qualified Domestic Relations Orders shall contain all of the following in order to meet the requirements of this rule:

6.2.5.1. The name and last known address of the participant and his or her ex-spouse. The ex-spouse shall be designated as the "alternate payee" within the order;

6.2.5.2. The name of the state retirement plan to which the Qualified Domestic Relation Order applies; and

6.2.5.3. The percentage of the marital property portion of the member's or retirant's Vested Accrued Retirement Benefit which is to be paid to the alternate payee.

6.2.6 For a Qualified Domestic Relations Order to be acceptable and honored by the Board, the order may not require the member's retirement plan to provide the alternate payee with any type or form of benefit, or any option, not otherwise provided under the plan; may not require the plan to provide for increased benefits determined on the basis of actuarial value; may not require the plan to pay benefits to an alternate payee which are required to be paid to another alternate payee under a prior Qualified Domestic Relations Order; and may not require the plan to pay benefits to an alternate payee in the form of a qualified joint and survivor annuity for the lives of the alternate payee and his or her subsequent spouse.

6.2.7. In cases of divorce or legal separation in which the Court of record enters a division order in accordance with the formula and the requirements of this rule, the Board shall make separate payments to the member or retirant and the former spouse in accordance with that order. Payments to the former spouse shall be prospective only and shall commence upon pay status to the member or retirant and following the Board's receipt and acceptance of the entered Qualified Domestic Relations Order.

6.2.8. In cases of divorce or legal separation, the Qualified Domestic Relations Order shall contain a prohibition against the member obtaining a loan under West Virginia Code § 18-7A-34 or West Virginia Code § 7-14D-23. Provided, That, a member may borrow from that portion of his or her individual account not subject to the Qualified Domestic Relations Order.

§ 162-1-7. Death Benefits.

7.1. The several Retirement Systems to be administered by the Board have varying and different definitions of who a survivor beneficiary may be if the member dies prior to retirement and following retirement. The Board has adopted the procedures in this section for payment of death benefits for all systems.

7.1.1. The "beneficiary" means the person who the member has designated as beneficiary in writing as of the date of his or her death. To the extent that plan provisions require the existence of an insurable interest between the named beneficiary and the member, the Board shall have the discretion to decide whether such interest exists.

7.1.2. If, upon the death of a member or retirant, a dispute arises between two (2) or more people who claim beneficiary or survivor benefits, the Board may make payment to the duly registered legal representative of the estate of the deceased member or retirant. Payment may only be made upon submission of written proof of the representative of the estate, generally incorporated in a probate court order. The Board shall accept the Last Will and Testament of the deceased member or retirant for the purposes of payment to the estate under this subdivision.

7.1.3. If the last designated beneficiaries of a member or retirant are children under the age of majority, but who reached their majority by the time of death, the Board shall always make payment pursuant to a court order or agreement entered into by the children of the member or retirant. If the designated beneficiaries are children who have not reached their majority, the Board shall only make payment to the court appointed guardian ad litem as specified in appropriate legal proceedings.

7.1.4. Except under joint and survivor options, a member or retirant may retain the right of selecting his or her designated beneficiary at any time.

§ 162-1-8. Miscellaneous.

8.1. The members of the Board and any employee or agent of the Board are subject to the Governor's Travel Rules and Regulations.

8.2. If a member of a Defined Benefit System is covered by a group insurance or prepayment plan participated in by a participating public employer, and if the member is permitted to, and elects to, continue coverage as a retirant, he or she may authorize the Board to have deducted from his or her annuity the payments required of him or her to continue coverage under group insurance or prepayment plan.

8.3. A participating public employer in any Retirement System has the right of setoff for any proven claim arising from embezzlement by, or fraud of, a member, retirant or beneficiary.

State of West Virginia
Consolidated Public Retirement Board
4101 MacCorkle Avenue SE
Charleston, West Virginia 25304-1636
Telephone: 304-558-3570 or 800-654-4406
Fax: 304-558-6337
email: CPRB@wvretirement.com
www.wvretirement.com

April 25, 2011
tmiller@wvretirement.com

Ms. Judy Cooper
Secretary of State's Offfice
Bldg. 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25304-0770

Dear Ms. Cooper:

Please find enclosed for final filing WVCSR § 162 Series 1,3, 5, 7 and 9 as passed pursuant to Senate Bill 112 during the 2011 Legislative session. I have also included a CD containing the final version of the legislative rules in WordPerfect format with all underlines and strike-through's omitted.

I am hopeful this filing meets all applicable requirements. Should you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Sincerely,

Terasa L. Miller, AFI
Acting Executive Director

Enclosures

cc: Donna Lipscomb, Department of Administration